

## MINUTE ORDER

CASE NUMBER: CIVIL NO. 19-00116 LEK-WRP

CASE NAME: Sarah Vargas vs. City and County of Honolulu, et al.,

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JUDGE: Leslie E. Kobayashi

DATE: 07/09/2021

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**COURT ACTION: EO: COURT ORDER: ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S REQUEST TO ENTER COURTHOUSE, FILED 7/8/21 (DKT. NO. 281)**

On July 8, 2021, counsel for Plaintiff Sarah Vargas ("Plaintiff") submitted a written request, pursuant to the *June 16, 2021 Temporary General Order Regarding District of Hawaii Response to COVID-19 Pandemic*, and requested the Court's permission for two persons - Plaintiff and Daniel G. Hempey, Esq. - to enter the courthouse and attend the trial in this matter in person and for the duration of trial in the courtroom ("7/8 Letter"). [7/8 Letter, filed 7/8/21 (dkt. no. 281).]

Plaintiff's counsel represent that Plaintiff "will be traveling from Chicago, Illinois . . . [and she] has not been vaccinated." [*Id.* at 1.] As to Mr. Hempey, "[he] is currently in São Paulo, Brazil[,] . . . intends to arrive in Hawaii greater than 10-days prior to the trial-start date, . . . is partially but [will] not be fully vaccinated[,] . . . [and Plaintiff] would like her chief trial counsel to appear in person during the trial." [*Id.*]

Plaintiff is not vaccinated. [*Id.*] The Centers for Disease Counsel and Prevention ("CDC") currently advises to "[d]elay travel until you are fully vaccinated." CDC, Domestic Travel During COVID-19, <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-during-covid19.html> (last visited July 8, 2021). The CDC's recommendations for unvaccinated travelers include:

While you are traveling:

- Wearing a mask over your nose and mouth is required on planes, buses, trains, and other forms of public transportation traveling into, within, or out of the United States and while indoors at U.S. transportation hubs such as airports and stations. Travelers are not required to wear a mask in outdoor areas of a conveyance (like on a ferry or the top deck of a bus). CDC recommends that travelers

who are not fully vaccinated continue to wear a mask and maintain physical distance when traveling.

- Avoid crowds and stay at least 6 feet/2 meters (about 2 arm lengths) from anyone who is not traveling with you.

Id.

Provided that Plaintiff first meets the state COVID-19 requirements for travel into the State of Hawai'i, the Court GRANTS the request to have permission for Plaintiff to enter the courthouse as a person who will have recently completed travel outside the State of Hawai'i prior to the trial commencing. Because she is not vaccinated and is traveling from outside the State of Hawai'i, Plaintiff is required to wear a mask and to maintain a minimum distance of **six feet** from other persons (including her attorneys and their support staff) at all times while she is in the courthouse. These requirements are reasonable and necessary in light of the potential for infection, especially because of the B.1.617.2 (Delta) variant. See CDC, SARS-CoV-2 Variant Classifications and Definitions, <https://www.cdc.gov/coronavirus/2019-ncov/variants/variant-info.html> (last visited July 8, 2021). The Delta variant is a highly transmissible and contagious version of the COVID-19 virus, and now is the dominant variant in the United States. Tanya Lewis, *How Dangerous Is the Delta Variant, and Will It Cause a COVID Surge in the U.S.?*, SCIENTIFIC AMERICAN (June 29, 2021), <https://www.scientificamerican.com/article/how-dangerous-is-the-delta-variant-and-will-it-cause-a-covid-surge-in-the-u-s/>.

Mr. Hempey does not have permission to enter the courthouse.

While Plaintiff's choice of counsel is understandable, this is a civil personal injury lawsuit. She does not have a Sixth Amendment right to counsel. See *Turner v. Rogers*, 564 U.S. 431, 441 (2011) ("But the Sixth Amendment does not govern civil cases."). Moreover, she is represented by two other attorneys who reside in Hawai'i and will be physically present at the trial.

Mr. Hempey resides in Brazil. [7/8 Letter at 1.] The CDC currently: evaluates Brazil as being "Level 4: Very High Level of COVID-19 in Brazil"; advises to "[a]void travel to Brazil"; and states that, "in Brazil, even fully vaccinated travelers may be at risk for getting and spreading COVID-19 variants." CDC, COVID-19 in Brazil, <https://wwwnc.cdc.gov/travel/notices/covid-4/coronavirus-brazil> (last visited July 8, 2021). Of particular concern is the P.1 (Gamma) variant. The Gamma variant "was first detected in the United States in January 2021[,], initially identified in travelers from Brazil." CDC, About Variants of the Virus that Causes COVID-19, <https://www.cdc.gov/coronavirus/2019-ncov/variants/variant.html> (last visited July 8, 2021).

Given the potential health risk both for Mr. Hempey and the potential health risk that he poses to persons in the courthouse, the Court hereby DENIES the request to have Mr. Hempey

enter the courthouse and attend the trial.

**IT IS SO ORDERED.**

Submitted by: Agalelei Elkington, Courtroom Manager